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Committee against Torture

Communication No. 473/2011

Decision adopted by the Committee at its fifty-third session (3–28 November 2014)

Submitted by:	Hussein Khademi et al. (represented by counsel, Bernhard Jüsi)
Alleged victims:	The complainants
State party:	Switzerland
Date of the complaint:	3 August 2011 (initial submission)
Date of decision:	14 November 2014
Subject matter:	Expulsion of the complainants to the Islamic Republic of Iran
Procedural issue:	None
Substantive issue:	Risk of torture upon return to the country of origin
Article of the Convention:	3

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-third session)

concerning

Communication No. 473/2011

Submitted by:	Hussein Khademi et al. (represented by counsel, Bernhard Jüsi)
Alleged victim:	The complainants
State party:	Switzerland
Date of complaint:	3 August 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 14 November 2014,

Having concluded its consideration of complaint No. 473/2011, submitted to the Committee against Torture by Bernhard Jüsi on behalf of Hussein Khademi et al. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainants, their counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainants are Hussein Khademi, born 23 September 1956, his wife, Shahin Qadery, born 8 June 1969, and their children, Ramyar, Zanyar, Mazyar and Kamyar, born in 1987, 1988, 1996 and 1997 respectively. All are nationals of the Islamic Republic of Iran. They claim that their expulsion to the Islamic Republic of Iran would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They are represented by counsel, Bernhard Jüsi.

1.2 On 5 August 2011, under rule 114 (former rule 108) of its rules of procedure (CAT/C/3/Rev. 5), the Committee requested the State party to refrain from expelling the complainants to the Islamic Republic of Iran while their complaint was under consideration by the Committee. On 23 August 2011, the State party informed the Committee that the Federal Office for Migration had requested the competent authorities to stay the execution of the expulsion order in relation to the complainants until further notice.

The facts as submitted by the complainant

2.1 Hussein Khademi and his family are of Kurdish ethnicity. Mr. Khademi was born in Divandareh, Kurdistan Province, Islamic Republic of Iran and moved to Marivan in 1969, where he joined the "Peshmerga," an armed force of the Democratic Party of (Iranian) Kurdistan (KDPI) at the age of 18 or 20 years. As an active peshmerga for three years, he participated in both combat operations and attacks against military structures. He also assisted and accompanied his father, a KDPI group leader. After leaving the Peshmerga, he went to worked in Tehran and Bandar Abbas, before returning to Marivan in 1986. He married his wife in Marivan, where he worked as a butcher and owned a small store.

2.2 In 1991, the Mr. Khademi was summoned by the ETELAAT, the Iranian intelligence services police. Upon his arrival at the ETELAAT station, he was blindfolded and left in a fenced courtyard for three days. On the fourth day he attempted to escape, but was caught and beaten by two prison guards. Bones in his right hand were broken. The ETELAAT accused him of spying for the KDPI in exile, carrying out dissident activities and threatening national security. He was kept in the ETELAAT prison in Marivan for 18 months, eight of which were spent in solitary confinement. He was subjected to questioning and beatings on an almost daily basis, as well as floggings and electric shocks. Mr. Khademi's family only learned of his whereabouts eight months into his detention.

2.3 In the summer of 1993, Mr. Khademi was transferred to Sanandaj and formally prosecuted and sentenced to death. He successfully appealed the verdict, however, and as a result was instead sentenced to 15 years in exile in the city of Yazd. He was obliged to report to the ETELAAT on a daily basis during this time. The complainant's father was also arrested, held in prison for three years and subsequently sentenced to 15 years in exile in the city of Kashan.

2.4 In March 2001, Mr. Khademi returned to Marivan, while on leave, to visit his mother and sisters on the occasion of Nowruz.[1] In the city centre, opposition supporters were demonstrating against the regime. That same evening, Mr. Khademi received a phone call from his brother warning him that the ETELAAT had come to arrest him on the grounds that he had been filmed in the proximity of the demonstrators earlier that day. Members of the ETELAAT searched his house in Yazd several times looking for incriminating material; they arrested his eldest son, Ramyar, who was detained at the police station in Yazd for two days before being released upon payment by Mr. Khademi's friend, Ashkezari. Mr. Khademi fled to Mehriz to a friend's house, where his family joined him a few days later and together they left for Saqiz. On 2 April 2001, Mr. Khademi and his eldest son, Ramyar, crossed illegally into Iraq, where the remaining family members joined them one month later. Together, they fled to Erbil in the Kurdistan region of Iraq, where they were recognized as refugees by the Office of the United Nations High Commissioner for Refugees (UNHCR) and issued residency permits by the Kurdish Democratic Party (KDP). However, fearing for his life after two assassination attempts in Erbil by the Marivan ETELAAT section, Mr. Khademi and his family left Iraq for Greece via Turkey in 2003. After receiving an expulsion order four years later, the family left Greece and travelled to Switzerland, where they filed an asylum application on 27 August 2007 and 3 September 2007. The complainants initially did not reveal the fact that they had been in Greece for fear of being expelled there under the Dublin regulations. Furthermore, on 22 September 2008, Radio Kurdistan broadcasted an obituary for the Mr. Khademi's deceased father, in which both the complainant and his father's activities with the Peshmerga were discussed.

[1] Persian New Year.

2.5 In Switzerland, the Khademis have continued their political activities against the regime of the Islamic Republic of Iran. They are active members of the Swiss section of the KDPI and have organized several demonstrations. They also regularly participate in protests throughout Switzerland and in Europe.

2.6 On 17 November 2010, the Federal Office for Migration (BFM) rejected the asylum applications of the Khademi family and ordered their expulsion to the Islamic Republic of Iran. On 20 December 2010, they appealed the decision before the Federal Administrative Tribunal, which, on 30 June 2011, upheld the decision of BFM. The Tribunal argued that it was not plausible that the ETELAAT only arrested Mr. Khademi five years after his return to Marivan, especially since the ETELAAT was allegedly aware of his activities with the KDPI. Furthermore, the Tribunal found that it was not credible that Mr. Khademi was identified in one day from footage taken of a demonstration which, according to him, was "huge." Conflicting statements regarding the manner in which he was identified also led to the Tribunal's conclusion that his claims were not credible. Regarding the statements made by Shahin Qadery, the second complainant, the Tribunal found that it was implausible that she and her sons joined Mr. Khademi in Mehriz, a few days after he had fled because doing so would have put the latter's life at risk, as their house in Yazd was being monitored by the ETELAAT and they would have been followed.

2.7 The Tribunal further found that the documents submitted by Mr. Khademi to support his claims could not be considered as pertinent evidence because (1) the copies of the court files could have been falsified and the original copies of the verdict against him could have been procured; (2) a letter from KDPI and a tribal elder confirming Mr. Khademi's political activities, a witness report and a letter from an Iranian lawyer, which explained that original case files could not be obtained, were written as a favour to him and were therefore unreliable; (3) the audio files of the interview on Kurdish radio could have been manipulated; and (4) the medical certificate did not demonstrate an obvious link between Mr. Khademi's post-traumatic stress disorder, bodily scars and bone fracture in his hand, and the ill-treatment he purportedly suffered in the Islamic Republic of Iran. In addition, the Tribunal took into account the fact that no reports concerning the death penalty conviction of Mr. Khademi were available — Kurdish organizations normally publish such reports — for it to draw a conclusion. It also considered that the allegations of the Khademi family concerning events in Iraq were false as the family was in Greece between 2003 and 2005, and that Ramyar Khademi, the third complainant, did not mentioned that they had been detained for two days during his first asylum interview. Finally, the Tribunal ruled that the complainants' political activities in Switzerland could not have come to the attention of the Iranian authorities, which only identified activists in exile who had leading roles in dissident movements.

2.8 The complainants maintain that the Swiss authorities have mistakenly concluded that they will not run the risk of persecution should they be expelled to the Islamic Republic of Iran. Mr. Khademi argues that the Federal Administrative Tribunal failed to invite the Swiss Embassy in Tehran to investigate further the authenticity of the court documents submitted or the existence of an arrest warrant against him, prior to its finding that those documents were not pertinent evidence of his claims. He observes that that omission resulted in the Tribunal's other erroneous findings that letters from the KDPI, the tribal leader, a fellow inmate and an Iranian lawyer explaining the inability to obtain original court documents were not credible. Furthermore, the complainants contend that the Swiss authorities reversed the burden of proof against them. In particular, the medical certificate was not found to sufficiently demonstrate the link between Mr. Khademi's injuries and the ill-treatment suffered without further investigation on the part of the Swiss authorities. The complainants also note that the Swiss authorities found that no record of Mr. Khademi's death penalty conviction existed without considering that the conviction was passed 20 years ago, when the use of Internet was limited. Moreover, the complainants argue that the

Swiss authorities did not address the matter of their illegal departure from the Islamic Republic of Iran, which would result in scrutiny by the Iranian authorities upon their return and which may expose them to further harm, should they be returned.[2] Mr. Khademi further submits that the Swiss authorities did not directly dispute his membership in the KDPI as a peshmerga, which leaves him vulnerable to imprisonment and death upon return.[3] Mr. Khademi adds that reports show that the Iranian authorities are actively trying to identify protestors abroad, even if they are low-profile activists,[4] as well as arresting, torturing and carrying out hundreds of death sentences against human rights activists within the Islamic Republic of Iran.[5]

The complaint

3. The complainants submit that, altogether, the human rights situation in the Islamic Republic of Iran, Mr. Khademi's political activities in the country, the family's political activities in Switzerland and the fact that Mr. Khademi had been tortured previously puts the family at a real and personal risk of torture or other inhuman and degrading treatment should they be returned to the Islamic Republic of Iran. The complainants maintain that their forcible return to the Islamic Republic of Iran would constitute a breach by Switzerland of its obligations under article 3, paragraph 1, of the Convention.

State party's observations on the merits

4.1 On 3 February 2012, the State party submitted its observations on the merits. It recalls the facts of the case and notes the complainants' argument before the Committee that they would be at risk of being subjected to torture or inhuman treatment if returned to their country of origin.

4.2 The State party notes that Ramyar Khademi, the third complainant, had indicated, in his first asylum interview on 10 September 2007, that he had left the Islamic Republic of Iran because of his father's political activities. However, in a second asylum interview with the Swiss authorities and before the Committee, he claims that he had been arrested, detained for two days and interrogated. The State party reiterates that, based on his initial claim, the Swiss asylum authorities found on 17 November 2010 that Ramyar Khademi had no credible reason to fear persecution upon return to his country of origin. Furthermore, the State party submits that Shahin Qadery, the second complainant, did not provide valid reason for an asylum claim. The State party also contends that the new evidence provided by the complainants, that is, letters from the KDPI dated 9 February 2010 and 1 May 2011, do not call into question the decisions of the asylum authorities of the State party.

4.3 The State party further clarifies the asylum proceedings pursued by the complainants. It notes in particular that, on 17 November 2010, the Federal Office for Migration rejected the complainants' applications for asylum, which were submitted on 27 August 2007 and 3 September 2007 — the latter on behalf of Ramyar Khademi, the third complainant —, because their allegations lacked credibility and nothing in their case

[2] The complainants refer to European Court of Human Rights, *R.C.* v. *Sweden*, Application no. 41827/07, judgment of 9 March 2010, para. 53.

[3] The complainant refers to United Kingdom: Home Office, *Operational Guidance Note – Iran*, 15 March 2011, v6, paras. 3.12.9 ff.

[4] The complainant refers to *BA (Demonstrators in Britain – risk on return) Iran* v. *Secretary of State for the Home Department*, CG [2011] UKUT 36(IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 1 February 2011.

[5] The complainant refers to Human Rights Watch, "World Report 2011 – Iran", 24 January 2011; and International Federation for Human Rights, "Prosecutor says hundreds to be executed in Iranian capital Tehran", 8 June 2011.

file led it to conclude that they would face torture upon return to the Islamic Republic of Iran. On 7 March 2011, the Federal Administrative Tribunal unified the separate asylum appeals from the complainants and noted that the complainants' request for free legal aid was incomplete. It also stated that it had received a report from the Swiss Embassy in Tehran indicating that it was possible to procure court files from Revolutionary Tribunals in the Islamic Republic of Iran. The complainants were given a time frame in which to comment on those findings, but they failed to do so. On 30 June 2011, the Tribunal confirmed its decision to expel the complainants. The State party adds that all the arguments presented by the complainants were considered in a complete manner and with strict adherence to the procedures of the Federal Office for Migration.

4.4 The State party recalls that, under article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exists substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. With reference to the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, the State party adds that the author should establish the existence of a "personal, present and real" risk of being subjected to torture upon return to the country of origin. The existence of such a risk must be assessed on grounds that go beyond mere theory or suspicion. Additional grounds must exist for the risk of torture to qualify as "real" (paras. 6 and 7). The following elements must be taken into account to assess the existence of such a risk: evidence of a consistent pattern of gross, flagrant or mass violations of human rights in the country of origin; allegations of torture or ill-treatment sustained by the author in the recent past and independent evidence thereof; political activity of the author within or outside the country of origin; evidence as to the credibility of the author; and factual inconsistencies in the claim of the author (para. 8).

4.5 With regard to the existence of gross, flagrant or mass violations of human rights, the State party submits that this is not in itself a sufficient basis for concluding that an individual might be subjected to torture upon his or her return to his or her country. The Committee should establish whether the individual concerned would be "personally" at risk of being subjected to torture in the country to which he or she would return.[6] Additional grounds should be adduced for the risk of torture to qualify as "foreseeable, real and personal" under article 3, paragraph 1, of the Convention.[7] The risk of torture must be assessed on grounds that go beyond mere theory or suspicion.[8]

4.6 In the light of the above, the State party submits that the human rights situation in the Islamic Republic of Iran is concerning in several regards. However, it recalls the finding of the Federal Administrative Tribunal that the country is not currently experiencing generalized violence. The State party further reiterates that the country situation is not in itself sufficient ground to conclude that the complainants might be subjected to torture in the event of removal. It argues that the complainants failed to show that they would face a foreseeable, real and personal risk of being subjected to torture if returned. Furthermore, the State party notes that the reports by the Committee itself, the International Federation for Human Rights, Amnesty International and Human Rights Watch on the human rights situation in the Islamic Republic of Iran, which were relied upon by the complainants to support their claims and which were reviewed by the Federal Administrative Tribunal, do

[6] See communication No. 94/1997, *K.N.* v. *Switzerland*, decision adopted on 19 May 1998, para. 10.2.

[7] Ibid., para. 10.5; and communication No. 100/1997, *J.U.A.* v. *Switzerland*, decision adopted on 10 November 1998, paras. 6.3 and 6.5.

[8] Committee against Torture, general comment No. 1 (1997), para. 6.

not demonstrate that they would run a personal risk of being subjected to torture upon their return.

4.7 With regard to the allegations of torture or ill-treatment sustained in the recent past by Mr. Khademi and the existence of independent evidence thereof, the State party underlines that State parties to the Convention have an obligation to take those allegations into consideration in order to assess the risk of the complainant being subjected to torture if returned to his country of origin.[9] The State party recalls that the Federal Administrative Tribunal did not find that the medical certificate presented by Mr. Khademi demonstrated a causal link between the his injuries and the allegations of ill-treatment he suffered while in detention in Marivan from 1991 to 1993. Furthermore, the Swiss authorities found that a letter, dated 24 May 2011, which was presented by the complainant as evidence and which was allegedly provided by a refugee in Sweden who had been a fellow inmate of Mr. Khademi, was not credible, as its content appeared to have been influenced by the complainant himself. Events recounted in the letter, in particular a meeting between Mr. Khademi and a judge, also did not correspond with Mr. Khademi's own recounts in the asylum interviews. Lastly, the State party points out that the complainant's argument that the Swiss authorities reversed the burden of proof against him is unfounded, since the jurisprudence of the European Court of Human Rights, cited by the latter, does not apply in his context, and that the Swiss authorities had, as per their obligation, thoroughly examined the medical certificate dated 4 September 2010. The Swiss authorities consequently found that no causal link between the complainant's injuries and the alleged ill-treatment suffered in the Islamic Republic of Iran could be established. Hence, the State party argues that the treatment sustained by the complainants, as claimed before the domestic authorities and the Committee, would not amount to a violation of the Convention.

4.8 With regard to the political activities pursued by Mr. Khademi, the State party notes that both before the domestic authorities and the Committee, Mr. Khademi contended that he was an active member of the KDPI Peshmerga in the 1980s; that KDPI activists are brutally oppressed in the Islamic Republic of Iran; that he had been arrested for his political activities; and that he risked detention once more if returned to his country of origin. These allegations were duly examined by the Swiss asylum authorities, which established that they lacked credibility. Similarly, Mr. Khademi's allegations relating to ETELAAT's search for him in Iran and Iraq were not found to be credible. Moreover, the State party notes that Mr. Khademi did not demonstrate in a credible manner how his illegal departure from the Islamic Republic of Iran would expose him to danger in case of return. It was further noted that Mr. Khademi has not been politically active in his country of origin since 1980 and did not submit credible evidence confirming his political activities or how the Iranian authorities would have known about them.

4.9 With regard to the political activities pursued by the complainants in Switzerland, the State party notes that, Mr. Khademi, Shahin Qadery and Ramyar Khademi, the first, second and third complainants, stated to the Committee that they were active members of the KDPI in Switzerland and participated regularly in protests, and that the Iranian authorities were actively identifying activists against the regime abroad, including "low-profile" activists or those who participated in protests for opportunistic reasons. To support the latter claim, the complainants relied on a ruling in a British case. The State party underlines that the complainants only declared their political activities in Switzerland following the negative decision taken by the Swiss asylum authorities on 17 November 2010. Furthermore, the State party notes that, on 30 June 2011, in the light of its jurisprudence and new information from the complainants, the Federal Administrative

[9] Committee against Torture, general comment No. 1 (1997), para. 8 (b).

Tribunal thoroughly examined whether they could be returned to their country of origin. It found that since the revision of the Iranian Penal Code in 1996, political activities conducted abroad by an organization against the regime were punishable and that, according to relevant reports, individuals had been arrested, accused and condemned for criticizing the Islamic Republic of Iran on the Internet. It also determined that the Iranian authorities surveyed the political activities of dissidents abroad and systematically registered their names. However, only dissidents of a particular profile were found to be targeted, that is, those who occupied lead positions in exile, posed a serious and concrete threat to the Government and who were in a position to place decisive pressure on the diaspora or the Iranian people, with the aim of toppling the Iranian regime. The State party argues that the complainants do not match that profile, as their activities, including obtaining permits for a booth and manning it, participating in protests and writing articles online accompanied by pictures, can be compared to the political activities of many Iranian dissidents in exile and do not attract the attention of the Iranian authorities. Furthermore, the ruling by the British court, on which the complainants relied, which found that "low-profile" dissidents abroad were targeted by the Iranian regime, cannot be interpreted as meaning that all "low-profile" dissidents would face ill-treatment if returned to the Islamic Republic of Iran, as that does not reflect the reality. In addition, the State party submits that, since Mr. Khademi's allegations pertaining to his political activities in the Islamic Republic of Iran were not judged to be credible by the Swiss asylum authorities, the same credibility concerns arise vis-à-vis his allegation that he was identified as an activist in Iraq.

4.10 With regard to the credibility and the factual consistency of the complainants' claims, the State party recalls that the Swiss asylum authorities considered it implausible that the Iranian authorities would arrest Mr Khademi for his involvement with the KDPI five years after he had allegedly stopped those political activities. The domestic authorities also found that Mr. Khademi's explanation regarding his identification by the ETELAAT during the first asylum proceedings was vague and illogical, as he must have assumed that it was safe to return to Marivan. In addition, following the negative asylum decision on 17 November 2010, Mr. Khademi indicated in the second asylum proceedings that he was identified to the ETELAAT by a masked man who had been called up as a witness during the his detention and who denounced him to the authorities. Considering the potential significance of such a revelation, the domestic authorities considered this additional information to have been invented by the complainant and concluded that there were no substantial grounds to believe that the complainants would be subjected to torture if returned.

4.11 In respect of Mr. Khademi's allegations that he returned to Marivan in 2001 to visit his family and by chance he found himself in the midst of a "huge" protest in the town centre, that he was identified through video footage within a day by the Iranian security forces and was being sought following their identification of him that same day, the State party notes that the asylum authorities found this recount to be implausible, considering the short time frame in which it all supposedly occurred and the complainant's description of the protest as "huge." Furthermore, during the first asylum proceedings, Mr. Khademi made statements which led the asylum authorities to question the veracity of his allegations regarding those incidents. For instance, Mr. Khademi stated that he visited his family in Marivan on the occasion of every Nowruz, even during his detention, as he was given seven days leave, as well as during his exile in Yazd. The Swiss asylum authorities therefore found it surprising that the ETELAAT would have suspected him on only that occasion of Nowruz of coming to Marivan with the aim of participating in a protest. Furthermore, Mr. Khademi provided conflicting statements in respect of his knowledge of ETELAAT's presence at the protest. In an initial interview, he claimed to have been unaware of ETELAAT agents taking photos, whereas in a later interview he claimed to have known

that the authorities had installed secret cameras and were filming protestors and that he was identified through the footage.

4.12 The State party submits that the asylum authorities established that the claims of Shahin Qadery, the second complainant, went against all logic. They considered it improbable that she was able to both inform her husband that he was being sought in Yazd, and explain to the Iranian authorities at their Yazd residence that he would not return while they were there; that the Iranian authorities would have left without further questions; and that she and her children would leave for Mehriz to join her husband without being followed. Moreover, the State party points out that the complainants omitted to declare that they had resided in Greece for four years prior to arriving in Switzerland. It was only through a criminal procedure against Mazyar Khademi, the fifth complainant, that this fact was revealed. Thus, the claims made by Shahin Qadery that the ETELAAT sought out her husband in Iraq just before the family departed are not true to reality.

4.13 The State party further submits that the asylum authorities found that the documents provided by the complainants to support their claims were not credible. The Swiss asylum authorities noted that the pardon requests presented by Mr. Khademi had no evidential value as they had been written by him. The letter from the tribal elder in Marivan, confirming the problems that Mr. Khademi allegedly faced, and the letter confirming his activities in the KDPI could also not be counted as evidence as they were purposely drafted to support his claims. A copy of Mr. Khademi's request for five days' leave from detention in Marivan and the postal receipt could not be accepted as evidence either. Regarding the copies of legal documents from Yazd, which were lodged by Mr. Khademi with the Swiss asylum authorities, it was considered that they could have been falsified and therefore could not be accepted as evidence. Moreover, when the Swiss asylum authorities requested Mr. Khademi to submit original copies of the judicial process against him, he produced a letter from an Iranian lawyer confirming that access to the original documents was impossible. The Swiss asylum authorities considered that the letter was not credible evidence, as it was again drafted with the purpose of supporting Mr. Khademi's claims. Furthermore, the Swiss authorities determined that the lawyer who drafted the letter had not been involved in the defence of Mr. Khademi before the Revolutionary Tribunal. Furthermore, the asylum authorities established, based on information from the Swiss Embassy in Tehran, that the general rule was that the condemned received a copy of the judgement or, at least, he or his mandated lawyer could obtain copies at a later stage. Mr. Khademi was unable to convincingly argue against those findings and explain why he had not used a lawyer who had defended him before the Revolutionary Tribunal to obtain the required legal documents.

4.14 As regards the complainants' other allegations, the State party notes, first of all, that the Swiss authorities could not find any evidence of the alleged death sentence against Mr. Khademi, which was subsequently commuted to a less severe sentence. The Kurdish media is known to actively draw attention to cases of the death penalty against Kurdish individuals, therefore Mr. Khademi's case would have caught the interest of the population. Secondly, the Swiss authorities found that Mr. Khademi and Shahin Qadery, the first and second complainants, did not need to make false allegations that Mr Khademi had been attacked at knife point in Iraq in 2005 and was being sought by the ETELAAT a little before leaving Iraq. Those claims do not conform to the reality, as the family was already in Greece at the time. Thirdly, the Swiss authorities put forward that the audio files of the announcement of the death of Mr. Khademi's father on Voice of Kurdistan radio could have been manipulated. Fourthly, the accounts of Ramyar Khademi, the third complainant were conflicting as, in his first asylum interview, he made no mention of having been detained for two days, an allegation which was only made in the second interview. Fifthly, the asylum authorities contended that Ramyar Khademi's allegation that he was interrupted

during the first asylum interview, before he could go into any details, is contrary to the reading of the interview, which indicates that he was permitted to speak freely.

4.15 In respect of the complaint itself to the Committee, the State party submits that the complainants only partially present the arguments of the competent Swiss authorities and that the arguments presented have not been sufficiently discussed or counter-argued. Rather, the complainants merely claim that the allegations which were not considered by the competent Swiss authorities to be credible are, in reality, true. In addition, the State party notes that the complainants did not adequately demonstrate in their complaint that the findings of the Swiss authorities were ill-founded with regard to the lack of pertinence of the evidence submitted in proving the authenticity of their allegations. It further notes that the complainants did not explain in a plausible manner why they could not produce relevant evidence to support the allegation that Mr. Khademi was sentenced to death by the Revolutionary Tribunal. The complainants' argument that the verdict cannot be found online because it occurred during the 1990s, when there was little Internet or modern forms of communication, is also not plausible, nor is their claim that they were unable to obtain copies of the judgement. Moreover, the State party underlines that the Swiss authorities did not find the documents submitted by the complainants regarding the Facebook campaign or the letter from a Swedish witness relating to that campaign to be compelling evidence. Lastly, the Swiss authorities did not find it necessary to deliberate on the issue of Mr. Khademi's alleged prosecution based on the alleged activities of his father, as no pertinent documentary evidence was produced, nor was there an explanation as to why such evidence was not provided.

4.16 The State party submits that, in the light of the foregoing, there are no substantial grounds to fear that the complainants would be concretely and personally exposed to torture if returned to the Islamic Republic of Iran. Their allegations and the evidence provided do not lead to the conclusion that their return would expose them to a foreseeable, real and personal risk of torture. The State party, therefore, invites the Committee to find that the return of the complainants to the Islamic Republic of Iran would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

Complainants' comments on State party's observations

5.1 On 23 April 2012, the complainants commented on the State party's observations. The complainants maintain that, as the State party itself submits, the human rights situation in Iran is worrying in several respects. The complainants argue that there clearly exists a real and imminent risk that they would be subjected to torture or other inhuman and degrading treatment if returned. They further argue that the State party's finding that there is no causal link between the ill-treatment of Mr. Khademi during his detention and his post-traumatic stress disorder and several fractures is unfounded; Mr. Khademi's health was not carefully examined by Swiss authorities.[10] If such an examination had been conducted, it would have concluded that it was highly probable that torture and ill-treatment were the cause of Mr. Khademi's fractures and post-traumatic stress disorder, as there are no other reasonable causes for those conditions.

5.2 The complainants challenge the State party's argument that Mr. Khademi was not politically active in his country of origin. They reiterate that he joined the KDPI Peshmerga at the age of 18 or 20 years. As a former politically active Kurd, he was suspected of spying for the KDPI and was seen as participating in a mass demonstration on the occasion of Nowruz in March 2001. Regardless of how high profile his political activities were, the

[10] The complainants refer to European Court of Human Rights, *R.C. v. Sweden*, Application No. 41827/07, judgment of 9 March 2010, para. 53.

ETELAAT viewed him as a politically dangerous person who threatened national security and consequently imprisoned, tortured, prosecuted and punished him based on that belief. As regards their political activities in Switzerland, the complainants dispute the State party's argument that they are "too low profile" to attract the attention of the Iranian authorities. They submit that Mr. Khademi was persecuted in the Islamic Republic of Iran for his political activities and was an active member of the KDPI, which automatically makes him a high-profile figure in exile. Mr. Khademi, Shahin Qadery and Kamyar Khademi, the first, second and third complainants, are also very active members of the Swiss section of the KDPI; the name Ramyar Khademi appears in many official documents and photos of all three are on the Internet. The complainants argue that, even if their political activities were considered as low profile, they would still risk ill-treatment on return to the Islamic Republic of Iran.

5.3 With regard to the State party's argument concerning the lack of credibility of the complainants' accounts, the complainants submit that the State party arrived at that conclusion without finding any major contradictions in their stories and by generally denying all the evidence that they provided to substantiate their claims. The complainants state that they are able to provide additional letters of testimony from other exiled persons who were found to be credible by official asylum bodies of other countries in Europe. Those letters confirm that Mr. Khademi was an active member of the KDPI between 1979 and 1983 and that he was in prison in Kurdistan Province between 1991 and 1993, and later exiled. The complainants state that they are unable to maintain contacts with anyone in the Islamic Republic of Iran to secure additional evidence of Mr. Khademi's imprisonment. Furthermore, the complainants argue that the minor contradictions mentioned by the State party were already explained in detail during the national procedure and in the complaint itself to the Committee.

5.4 The complainants put forward that, considering their past and current political activities, Mr. Khademi's conviction in the Islamic Republic of Iran, their illegal departure from that country and their application for asylum in Switzerland, there is a real and imminent risk that they would be subjected to torture or other inhuman and degrading treatment should they be returned to the Islamic Republic of Iran. In the light of the ill-treatment already suffered by Mr. Khademi and the credible reports about the frequent use of torture by Iranian security officials, the complainants fear that they would be apprehended and detained upon return, and that they would suffer ill-treatment in prison.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case, the State party has recognized that the complainants have exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible and proceeds with the consideration of the merits.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainants to the Islamic Republic of Iran would violate the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to the Islamic Republic of Iran. In assessing that risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 in the context of article 22, in which it states that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (para. 6), but it must be personal and present. In that regard, in previous decisions, the Committee determined that the risk of torture must be foreseeable, real and personal.[11] The Committee recalls that under the terms of its general comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, provided for by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.

7.4 The Committee notes that the State party itself recognizes that the human rights situation in the Islamic Republic of Iran is concerning and that prominent political opponents of the regime are at risk of torture. The Committee further recalls its own findings regarding the extremely worrisome human rights situation in the Islamic Republic of Iran, particularly for individuals of Kurdish ethnicity, since the elections held in the country in June 2009.[12] The Committee also notes that the State party does not dispute that Mr. Khademi was active in the KDPI Peshmerga, a Kurdish dissident movement in the late 1980s, and that he was imprisoned from 1991 to 1993. The Committee further notes that the State party does not dispute that the complainants were granted refugee status in Iraq by UNHCR based on those very claims.

7.5 The Committee takes note of the State party's submissions that the complainants' political activities in Switzerland were "too low profile" to attract the attention of the Iranian authorities. The Committee, however, observes that since Mr. Khademi had been previously imprisoned for his political activities, it is likely that he is on the watch list of the Iranian authorities for further activities abroad. The Committee also takes note of the State party's submission that the asylum authorities examined the medical certificate presented by Mr. Khademi, and found that no causal link between the complainant's

[11] See, inter alia, communications No. 258/2004, *Dadar* v. *Canada*, decision adopted on 23 November 2005; and No. 226/2003, *T.A.* v. *Sweden*, decision adopted on 6 May 2005.

[12] See communications No. 357/2008, *Jahani* v. *Switzerland*, decision adopted on 23 May 2011, para. 9.4, and No. 381/2009, *Faragollah et al* v. *Switzerland*, decision adopted on 21 November 2011, para. 9.4.

injuries and the alleged ill-treatment suffered in the Islamic Republic of Iran had been established. The Committee, however, observes that the medical certificate states that Mr. Khademi's medical condition "fits the description of the ill-treatment described."

7.6 Consequently, and in the light of the general human rights situation in the Islamic Republic of Iran that particularly affects members of the opposition, and in view of Mr. Khademi's political opposition activities in both the Islamic Republic of Iran and Switzerland, his previous imprisonment and history of torture, the Committee considers that there are substantial grounds for believing that Mr. Khademi, the first complainant, risks being subjected to torture if returned to the Islamic Republic of Iran.

7.7 As for the cases of Shahin Qadery, Mr. Khademi's wife and the second complainant, and of Zanyar Khademi, Mazyar Khademi and Kamyar Khademi, Mr. Khademi's children and the fourth, fifth and sixth complainants, which are dependent upon his case, the Committee does not find it necessary to consider them separately. As regards Ramyar Khademi, the third complainant, who was not a minor at the time the family lodged their first asylum applications in Switzerland and whose case was initially assessed separately by the Swiss asylum authorities, the Committee notes that the Federal Administrative Tribunal merged his asylum application with that of his family upon appeal. The Committee, like the State party, thus considered his case jointly with that of the Khademi family, based on the facts presented by Mr. Khademi.

8 The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that there are substantial grounds for believing that Hussein Khademi would face a foreseeable, real and personal risk of being subjected to torture by government officials if returned to the Islamic Republic of Iran. The Committee therefore concludes that the deportation of the complainants to the Islamic Republic of Iran would amount to a breach of article 3 of the Convention.

9. The Committee is of the view that the State party has an obligation to refrain from forcibly returning the complainants to the Islamic Republic of Iran or to any other country where they run a real risk of being expelled or returned to the Islamic Republic of Iran. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days from the date of the transmittal of this decision, of the steps taken in response to the present decision.